

MITCHELL v. MINNESOTA LIFE, ET AL.
ACTION NO. C07-05722 EMC ADR

DEFENDANT STANDARD INSURANCE COMPANY'S
NOTICE OF REMOVAL

EXHIBIT E

WARREN H. NELSON, JR. #104744
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Attorney for Defendants
STANDARD INSURANCE COMPANY and
MINNESOTA LIFE INSURANCE COMPANY

ENDORSED
FILED
ALAMEDA COUNTY

NOV 19 2007

CLERK OF THE SUPERIOR COURT
By E. BAKER Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

RANDY R. MITCHELL D.D.S.,) Case No.: VG07348221
)
Plaintiff,) GENERAL DENIAL AND AFFIRMATIVE
) DEFENSES OF DEFENDANTS STANDARD
vs.) INSURANCE COMPANY AND MINNESOTA
) LIFE INSURANCE COMPANY
MINNESOTA LIFE INSURANCE)
COMPANY, STANDARD INSURANCE)
COMPANY, AND, DOES 1 through)
10, inclusive,) ASSIGNED FOR ALL PURPOSES TO
) JUDGE David Hunter
Defendants.) DEPARTMENT 520

Pursuant to Code of Civil Procedure section 431.30(d),
defendants STANDARD INSURANCE COMPANY ("Standard") and MINNESOTA
LIFE INSURANCE COMPANY (collectively, "defendants"), generally
deny each and every allegation of plaintiff's unverified
complaint and assert the following affirmative defenses:

FIRST DEFENSE

1. The complaint and each claim for relief therein fails
to state a claim upon which relief can be based.

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1 SECOND DEFENSE

2 2. Plaintiff's recovery is limited by the terms and
3 conditions of the applicable policy or policies, including
4 limitations upon and exclusions to coverage.

5 THIRD DEFENSE

6 3. Plaintiff has waived any right to recovery under the
7 terms and conditions of the applicable policy or policies.

8 FOURTH DEFENSE

9 4. Plaintiff is estopped from seeking recovery on any
10 policy or policies.

11 FIFTH DEFENSE

12 5. Plaintiff's recovery is limited by the proportion of
13 his fault for any of the damages requested.

14 SIXTH DEFENSE

15 6. Plaintiff would receive a windfall and be unjustly
16 enriched by any recovery on any policy or policies.

17 SEVENTH DEFENSE

18 7. Plaintiff's recovery is limited by any failure to
19 mitigate damages.

20 EIGHTH DEFENSE

21 8. Performance of any duty owed to plaintiff under any
22 policy has been excused by plaintiff's actions or inactions.

23 NINTH DEFENSE

24 9. To the extent that there has been unreasonable delay,
25 plaintiff's complaint and each cause of action or claim for
26 relief therein is barred by the doctrine of laches.

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28 --

1 TENTH DEFENSE

2 10. The complaint and each purported claim for relief or
3 cause of action therein is barred by the applicable statutes of
4 limitation, including but not limited to Code of Civil Procedure
5 sections 335, 337, 338, 339, 340 and 343.

6 ELEVENTH DEFENSE

7 11. To the extent that plaintiff is guilty of unclean
8 hands, his claims for relief and causes of action against
9 Standard are barred.

10 TWELFTH DEFENSE

11 12. Any demand for attorney's fees should not be granted
12 because the claim handling, claim decision and defenses asserted
13 to this action are reasonable and have been made in good faith.

14 THIRTEENTH DEFENSE

15 13. To the extent that the provisions of ERISA govern this
16 action, plaintiff's complaint, his common law causes of action
17 and his claims for relief are preempted and cannot as a matter
18 of law be maintained.

19 FOURTEENTH DEFENSE

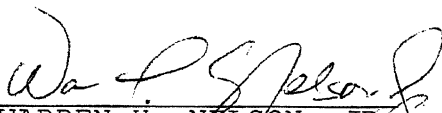
20 14. To the extent that the provisions of ERISA govern this
21 action, plaintiff has failed to exhaust his administrative
22 remedies.

23 W H E R E F O R E, defendants respectfully request that:

- 24 1. Plaintiff take nothing by his complaint;
25 2. His complaint be dismissed with prejudice;
26 3. Defendants recover their costs and attorney fees
27 against plaintiff to the fullest extent permitted by
28 law; and,

1 4. The Court grant such other and further relief to
2 defendants as in all the circumstances may be just.

3 Dated: November 12, 2007

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5 
6 WARREN H. NELSON, JR.
7 A PROFESSIONAL CORPORATION
8 6161 El Cajon Boulevard, # 273
9 San Diego, CA 92115

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11 Attorney for Defendants
12 STANDARD INSURANCE COMPANY and
13 MINNESOTA LIFE INSURANCE COMPANY
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DOCKET No. VG07348221

Mitchell v. Minnesota Life Insurance Company, et al.

PROOF OF SERVICE BY MAIL

I, Warren H. Nelson, Jr., the undersigned, hereby certify and declare under penalty of perjury that I am over the age of 18 years and am not a party to this action. My business address is Warren H. Nelson, Jr., A Professional Corporation, 6161 El Cajon Blvd., # 273, San Diego, CA 92115, telephone (619) 269-4212, facsimile (619) 501-7948. On the 12th day of November 2007, I served a true copy of the foregoing document titled exactly:

GENERAL DENIAL AND AFFIRMATIVE DEFENSES OF DEFENDANTS
STANDARD INSURANCE COMPANY AND MINNESOTA LIFE INSURANCE
COMPANY

By placing it in an addressed sealed envelope with correct postage affixed thereto and personally depositing it/them in the United States mail. I addressed the mailing envelope to the following:

Michael B. Horrow, Esq.
Donahue & Horrow LLP
222 North Sepulveda Blvd., 20th Floor
El Segundo, CA 90245

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of November 2007 at San Diego, California.

Warren H. Nelson, Jr.

E-103

DOCKET No. UNASSIGNED

Mitchell v. Minnesota Life Insurance Company, et al.

PROOF OF SERVICE BY MAIL

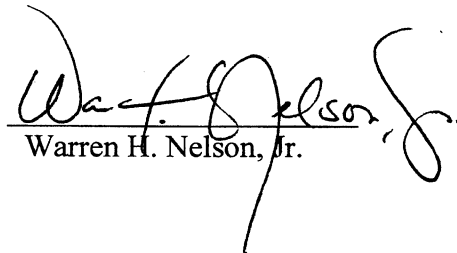
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Michael B. Horrow, Esq.
Donahue & Horrow LLP
222 North Sepulveda Blvd., 20th Floor
El Segundo, CA 90245

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of November 2007 at Oakland, California.


Warren H. Nelson, Jr.